million each—Justice Max Baer and Joan Orie Melvin.[11] Justice Baer received more than $230,000 from the Pennsylvania Democratic Party, $77,500 from the Philadelphia Future PAC, $65,500 from the Committee For A Qualified Judiciary, and at least twenty contributions of $10,000 or more.[12] Ms. Melvin received $60,000 from the Pennsylvania Future Fund PAC, more than $53,000 from the Pennsylvania Medical PAC, and at least twenty contributions of $10,000 or more.[13] These large contributions in Pennsylvania and elsewhere, particularly from persons and organizations that have business before the courts, have shaken public confidence in the state judiciary.

B. Campaign Contributions to Judicial Candidates Are Undermining Public Confidence in Fair and Impartial Courts.

Concern over the rise in judicial campaign contributions is not confined to academics. Skyrocketing judicial election fundraising and spending over the past decade has engendered a widespread public perception that due process of law has a price tag. More than 70 percent of Americans believe that judicial campaign contributions have at least some influence on judges' decisions in the courtroom, according to a 2004 public opinion survey conducted by Zogby International. Justice at Stake Campaign, March 2004 Survey Highlights: Americans Speak Out On Judicial Elections (2004), *at* http://faircourts.org/files/ZogbyPollFactSheet.pdf. More than 80 percent of the African Americans surveyed expressed this view, including 51 percent who believe that judicial election contributions carry a "great deal" of influence. *Id.*

These 2004 poll results are consistent with the results of a 2001 nationwide poll, in which 76 percent of those surveyed believe that campaign contributions influence judges' decisions.

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[11] Institute On Money In State Politics, State At A Glance: Pennsylvania 2003, Judicial Elections, *at* http://www.followthemoney.org/database/StateGlance/state_judicial_elections.phtml?si=200338.

[12] *Id.*, Candidates, Baer, Max, *at* http://www.followthemoney.org/database/StateGlance/candidate.phtml?si=200338&c=59172.

[13] *Id.*, Candidates, Melvin, Joan Orie, *at* http://www.followthemoney.org/database/StateGlance/candidate.phtml?si=200338&c=59177.

Greenberg Quinlan Rosner Research & American Viewpoint, Justice At Stake Frequency Questionnaire 8 (2001), http://www.gqrr.com/articles/1617. According to the poll results, more than 80 percent of those surveyed are concerned that, "[i]n some states, nearly half of all supreme court cases involve someone who has given money to one or more of the judges hearing the case," while 86 percent of those surveyed are concerned that "lawyers are the biggest campaign contributors to judicial candidates, and they often appear in court before judges they've given money to." *Id.* As a result, 79 percent of the registered voters polled believe that "[j]udges should be prohibited from presiding over and ruling in cases when one of the sides has given money to their campaign." *Id.* at 10.

Voters in Illinois are even more jaded about the influence of campaign contributions on the integrity of their state judiciary. A 2004–05 poll showed that over 87 percent of the Illinois voters polled believe that campaign contributors influence the decisions of judges in Illinois to at least some degree. Center for State Policy and Leadership at the University of Illinois at Springfield, *Illinois Statewide Survey on Judicial Selection Issues* 23 (Winter 2004–05), *at* http://www.ilcampaign.org/analysis/reports/2005.asp. Only 52 percent of those voters polled think that the phrase "fair and impartial" describes judges, and less than half the voters polled believe the term "independent" describes judges. *Id.* at 6–7.

The facts of cases such as this one have done little to improve the Illinois public's faith in its judiciary. Regardless of whether Justice Karmeier's decision in this case was based on an unbiased consideration of the facts and the law, public confidence in Justice Karmeier's integrity has been tarnished. *See, e.g.*, Lyle Denniston, *A Constitutional Duty to Recuse?, at* http://scotusblog.com/movabletype/archives/2005/12/25-week/ ("Should an elected judge, who accepts large campaign donations, sit on a case that directly affects the financial or business interests of the donors and their associates? Put as an ethical question, the answer would seem to be obvious: No."); AutoMuse, *DeLay Gets New Judge but State Farm Keeps Karmeier?* (Nov. 3, 2005), *at* http://www.vehicleinfo.com/AutoMuse/archives/2005/10/justice_for_sal.html; *id.* (noting that post-decision interviews revealed "overall lack of faith in the judicial system, the uniform belief that

justice had been sold to the entity capable of paying the most"). Unfortunately, the cloud that hangs over Justice Karmeier's decisions is not limited to this case. Explaining that Justice Karmeier recently cast the deciding vote in reversing a $10.1 billion judgment against Philip Morris USA, a company that reportedly, along with a business lobbying group backing it, spent more than $1 million supporting Karmeier in the 2004 election, a newspaper editorial summed up what is reflected in the polls:

> The juxtaposition of gigantic campaign contributions and favorable judgments for contributors creates a haze of suspicion over the highest court in Illinois. . . . Although Mr. Karmeier is an intelligent and no doubt honest man, the manner of his election will cast doubt over every vote he casts in a business case. This shakes public respect for the courts and the law—which is a foundation of our democracy.

Editorial, *Illinois Judges: Buying justice?*, St. Louis Post-Dispatch, Dec. 20, 2005, at B8.

The belief that campaign contributions influence judges' decisions naturally leads to the belief that "justice" is more attainable for the wealthy and the connected. According to the 2001 nationwide poll, only 33 percent of those surveyed believe that the "justice system in the U.S. works equally for all citizens," while 62 percent believe that "[t]here are two systems of justice in the U.S.—one for the rich and powerful and one for everyone else." Greenberg Quinlan Rosner Research & American Viewpoint, Justice At Stake Frequency Questionnaire 7 (2001), *at* www.gqrr.com/articles/1617/1412_JAS_ntlsurvey.pdf. Yet 78 percent of those surveyed believe that "[c]ourts are unique institutions of government that *should* be free of political and public pressure." *Id.* (emphasis added). Americans from coast to coast value—but believe they are being denied—due process of law as a result of large judicial campaign contributions. This perception is not limited to the State of Illinois but, instead, exists nationwide.

Members of the judiciary share the public's concern regarding the influence—perceived or real—of political contributions on the judicial process. According to a 2002 written survey of 2,428 state lower, appellate, and supreme court judges,

nearly half of the judges surveyed (46 percent) *themselves* believe that campaign contributions to judges influence their decisions. Greenberg Quinlan Rosner Research & American Viewpoint, Justice At Stake State Judges Frequency Questionnaire 5 (2002), http://www.gqrr.com/articles/1617/1411_JAS_judges.pdf. And more than 70 percent of surveyed judges expressed concern regarding the fact that, "[i]n some states, nearly half of all supreme court cases involve someone who has given money to one or more of the judges hearing the case." *Id.* at 9. As a result, more than 55 percent of state court judges believe that "judges should be prohibited from presiding over and ruling in cases when one of the sides has given money to their campaign." *Id.* at 11. Justice Karmeier himself wondered "How can people have faith in the system?" Ryan Keith, *Spending for Supreme Court Renews Cry for Finance Reform*, Assoc. Press (AP Wire), Nov. 3, 2004.

The story behind contributions made to a judicial candidate for the Washington Supreme Court in the 2004 election illustrates the reason for concern both among judges and the public about the effect of contributions on the administration of justice. In that election, an attorney named James Johnson defeated Judge Mary Kay Becker, a state court of appeals judge. A company called Cruise Specialists, Inc. ("CSI") contributed $112,000 to Johnson's campaign, but not to any other candidate in 2004. A study for the American Judicature Society highlighted that CSI contributed to Johnson's campaign after it had lost a suit in state court, that had been affirmed on appeal in a decision written by Judge Becker. It is difficult to see CSI's contributions as anything other than retribution against Judge Becker. As the study's author commented: "The CSI contributions send a chilling message to judges who must decide cases involving wealthy litigants." Peter Callaghan, *Why Donations in Judicial Races Demand Limits*, The News Trib., Jan. 20, 2006, *available at* http://www.thenewstribune.com/news/columnists/callaghan/story/5459887p-4927316c.html.

The public at large and judges are not the only persons who believe that campaign contributions affect judicial decisions—both attorneys and their clients with cases before such judges do as well. The large percentage of contributions to judicial candidates by lawyers and businesses is consistent with the belief among those contributors that such contributions will

affect the outcome of their cases. A study by the Texas State Bar and Texas Supreme Court found that 79 percent of attorneys surveyed believes that campaign contributions have a significant influence on a judge's decision. *See Republican Party of Minn. v. White*, 416 F.3d 738, 774 (8th Cir. 2005) (en banc) (Gibson, J. dissenting) (citing Alexander Wohl, *Justice for Rent*, The Am. Prospect (May 22, 2000)). In an *amicus* brief urging this Court to accept certiorari in *Dimick v. Republican Party of Minnesota*, forty large corporations [hereinafter "concerned corporations"], including Respondent State Farm, stated: "*Amici* often have reasons for concern about—and many of them have had at least one experience of—receiving what appears to be less than fair and impartial justice in jurisdictions where they . . . have not contributed to . . . judicial candidates." Brief of *Amicus Curiae* Concerned Corporations in Support of Petitioners at 3, *Dimick v. Republican Party v. Minn.*, No. 05-566 (U.S. Jan. 4, 2006), 2006 WL 42102.

In other words, solicitations for contributions by judges to attorneys and businesses can be coercive. A Nevada judge was recently censured by the state Judicial Discipline Commission for pressuring lawyers into giving him contributions for his 2002 reelection campaign. A complaint filed in 2004 with the Commission alleged that the judge, while in conference with a lawyer, suggested that the lawyer contribute to his campaign and asked another lawyer why he had attended a fundraiser for his opponent. *Former Vegas Judge Censured*, Assoc. Press Alert—Political, June 30, 2005, *available at* http://www.krnv.com/Global/story.asp?S=3546295&nav=8faObgVv.

Unfortunately, occasional punishment of the most blatant instances of coercion does nothing to address the pervasive, more subtle coercion that lawyers and companies simply endure as a cost of doing business in court and the toll it takes on the perception of justice rendered. As reflected in the Am. Prospect article cited by Judge Gibson, rather than file a complaint with a judicial disciplinary commission in response to requests for contributions, many attorneys instead feel compelled to pull out their checkbook. They "simply [can] not afford to risk offending whichever judge [is] eventually elected." Alexander Wohl, *Justice for Rent*, The Am. Prospect (May 22, 2000). And as the concerned corporations stated in their amicus brief supporting the

grant of certiorari in *Dimick*, "refusing to give may create a real or perceived disadvantage that neither the *Amici* nor their shareholders can lightly disregard." Brief of *Amicus Curiae* Concerned Corporations, *Supra* at 3.

These contributors understand that such coercion is intimately tied to the due process afforded to litigants. The concerned corporations explained that "direct and personal solicitations of campaign contributions by a judge or judicial candidate are likely to be coercive [and] contribute to a widespread—and reasonable—perception of bias in the administration of justice." *Id.* at 5. The concerned corporations supported that belief with statistics. A 2001 report revealed that the Texas Supreme Court was 750 percent more likely to grant discretionary petitions for review filed between 1994 and 1998 by contributors of at least $100,000 than by non-contributors, and 1,000 percent more likely to grant them for contributors of $250,000 or more than by non-contributors. Texans for Public Justice, *Pay to Play: How Big Money Buys Access to the Texas Supreme Court*, http://www.tpj.org/docs/2001/04/reports/paytoplay/index.htm. In short, campaign contributions to judicial candidates undermine the faith of parties, as well as attorneys, the general public, and judges, in the availability of due process of law.

C. States Need Mechanisms Through Which They Can Further Their Compelling Interest in Combating Real and Perceived Corruption in the Judicial System.

Maintaining the integrity of the judiciary and respect for its judgments is a vital state interest "of the highest order." *Republican Party of Minn. v. White*, 536 U.S. 765, 793 (2002) (Kennedy, J., concurring); *see also Cox v. Louisiana*, 379 U.S. 559, 565 (1965) (explaining that a state may protect against the possibility of public perception that judicial action "did not flow only from the fair and orderly working of the judicial process"). Moreover, as this Court has repeatedly recognized, states have a compelling interest in preventing actual corruption and "the eroding of public confidence in the electoral process through the appearance of corruption." *McConnell v. FEC*, 540 U.S. 93, 136 (2003). In approving prophylactic solutions such as contribution

limits to further the interest in protecting against corruption in the context of legislative elections, this Court noted that bribery laws are insufficient to address such concerns, for such laws "deal with only the most blatant and specific attempts of those with money to influence government action" and "the scope of such pernicious practices can never be reliably ascertained." *Buckley v. Valeo*, 424 U.S. 1, 27–28 (1976).

More recently, this Court further explained the broad interest in preventing corruption with respect to contributions to campaigns, stating that "[i]n speaking of 'improper influence' and 'opportunities for abuse' in addition to 'quid pro quo arrangements,' we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors." *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 389 (2000). Though this interest is significant with respect to legislative elections because a legislator may cast one vote of many on a policy decision that favors one group over another, the interest is even more heightened in the context of judicial elections. In the judicial realm only two litigants are before a judge and it is a zero sum game—one litigant will win, one will lose, and the prize at stake may be a large amount of money, one's freedom or even one's life.

Moving to recuse a judge in a particular case because of potentially biasing large campaign contributions by the opposing party or attorney involves an obvious risk if the motion is denied. Moreover, as recognized by this Court, evidence of such bias would be hard for any litigant to prove. *See id.* at 389 (improper influence encompasses the broader threat from elected officials too compliant with the wishes of large contributors). States thus need guidance as to when recusal may be required to combat corruption and safeguard due process. *See Cox*, 379 U.S. at 562 ("A State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence.").

II. AS TRADITIONAL SAFEGUARDS COME UNDER ATTACK, STATES NEED GUIDANCE ABOUT THE ROLE OF RECUSAL IN ENSURING DUE PROCESS.

A. The Court's Decision in *Republican Party Of Minnesota v. White* Has Created Uncertainty About Canons of Judicial Ethics Traditionally Used to Protect the Integrity of Courts.

As this Court has recognized, there is a "fundamental tension between the ideal character of the judicial office and the real world of electoral politics." *Chisom v. Roemer*, 501 U.S. 380, 400 (1991). The facts of this case demonstrate that the tension described in *Chisom* is not merely theoretical, but instead poses an actual and occasionally severe threat to due process. As canons of judicial conduct fall into question in the wake of *Republican Party of Minnesota. v. White*, 536 U.S. 765 (2002), states and derivatively, litigants, are left with precious few reliable mechanisms to safeguard the constitutional right to process under the Fourteenth Amendment.[14] As the canons are narrowed or stricken, the traditional buffers between state judiciaries from outside influences that threaten impartiality are eroding. Among such outside influences are large campaign contributions from attorneys and parties with business before state courts. Because that erosion is occurring on a nationwide basis, this Court should seize the opportunity to decide whether recusal is required as a matter of due process when other protections fail.

In varying forms, all fifty states have adopted codes of judicial conduct modeled on the American Bar Association's Model Code of Judicial Conduct. *See* www.abanet.org/judicialethics/resources/resources_state.html. One of the primary purposes of the canons that the states have adopted is to promote the judicial

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[14] While the potential harms raised by large campaign contributions apply only to state judicial elections, many of the due process protections provided by the canons also apply in the context of state judges in appointive systems. As in the more dramatic context of judicial elections, the uncertainties surrounding those due process protections also militate in favor of guidance as to the circumstances in which due process may mandate recusal.

impartiality necessary to safeguard due process.[15] This is especially true of canons modeled after Canon 5 of the Model Code, which provides that "[a] judge or judicial candidate shall refrain from inappropriate political activity." Model Code of Jud. Conduct Canon 5 (1990), www.abanet.org/cpr/mcjc/canon_5.html.[16]

Since this Court's decision in *White*, judicial canons have come under increasing and increasingly successful attack. As a result, state apparatuses for regulating judicial conduct, especially in the campaign context, are in disarray. As one trial court observed: "To say that there is considerable uncertainty regarding the scope of the Supreme Court's decision in *White* is an understatement. . . . It has caused, and will continue to cause, considerable uncertainty and consternation on the part of judicial candidates." *North Dakota Family Alliance v. Bader*, 361 F. Supp. 2d 1021, 1041–42 (D.N.D. 2005).

Since this Court struck down Minnesota's "announce clause" in *White*, there has been a host of challenges to other judicial conduct canons, including "pledges or promises" and "commit" clauses, prohibitions on judicial candidates directly soliciting contributions, and prohibitions on judicial candidates engaging in partisan activities. Each of these canons serves to preserve due process. All are now on uncertain footing.

Many codes ban "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office." The rationale for the "Pledges or Promise Clause" is to prevent promises by judicial candidates that "impair the integrity of the court by making the candidate appear to have pre-judged an issue without the benefit of argument or counsel,

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[15] *See, e.g.*, N.Y. Code of Jud. Conduct, Pmbl. (noting that the rules are to "be construed so as not to impinge on the essential independence of judges making judicial decisions"); Maine Code of Jud. Conduct, Pmbl. ("Our legal system is based on the principle that an independent, fair and competent judiciary is essential to our concepts of justice and the rule of law. . . .").

[16] The ABA is in the midst of revising its Model Code of Judicial Conduct. The Final Draft Report's version of the new Canon 5 states as follows: "A judge or candidate for judicial office shall refrain from political activity that is inconsistent with the integrity, impartiality, and independence of the judiciary." Model Code of Jud. Conduct Canon 5 (Final Draft Report, Dec. 14, 2005), www.abanet.org/judicialethics/Canon5Final.pdf.

applicable law, and the particular facts presented in each case." *Ackerman v. Ky. Jud. Retirement & Removal Comm'n*, 776 F. Supp. 309, 315 (W.D. Ky. 1991). While the *White* majority recognized that campaign promises might "pose a special threat to open-mindedness" *White*, 536 U.S. at 780, courts facing challenges to pledges or promises clauses in the wake of *White* have reached mixed conclusions. *Compare Alaska Right to Life Pol. Action Comm. v. Feldman*, 380 F. Supp. 2d 1080, 1083 (D. Alaska. 2005) (striking down Alaska's Pledges or Promises Clause); *and North Dakota Family Alliance*, 361 F. Supp. 2d at 1039 ("A careful reading of the majority opinion in White makes it clear that the 'pledges and promises clause' . . . [is] not long for this world"); *with In re Kinsey*, 842 So.2d 77, 87 (Fla.) (upholding Florida's Pledges or Promises Clause); *and In re Watson*, 794 N.E. 2d 1, 6 (N.Y. 2003) (upholding New York's Pledges or Promises Clause).

This Court in *White* did not address the validity of Minnesota's prohibition on candidates personally soliciting campaign contributions. Prior to *White* such bans were generally upheld because of the strong due process interests the bans served. *See, e.g., Stretton v. Disciplinary Bd. of the Supreme Ct.*, 944 F.2d 137, 146 (3d Cir. 1991) ("[W]e cannot say that the state may not draw a line at the point where the coercive effect, or its appearance, is at its most intense—personal solicitation by the candidate."); *In re Fadeley*, 802 P.2d 31, 40 (Or. 1991) (explaining that the ban mitigates not only the danger of the appearance of *quid pro quo* corruption, but also the prospect of coercion of lawyers and litigants into contributing). Since *White*, however, both the Eighth and Eleventh Circuits have struck down solicitation canons as unconstitutional. *See Weaver v. Bonner*, 309 F.3d 1312, 1322 (11th Cir. 2002) (striking down Georgia's rule prohibiting judicial candidates from personally soliciting campaign contributions); *White*, 416 F.3d at 765-66 (holding that Minnesota's solicitation clause was unconstitutional to the extent that it prohibited candidates from signing solicitation letters and

making campaign appeals before large groups).[17]

Weaver is indicative of the uncertain future of the canons. In striking down Georgia's solicitation canon, the Eleventh Circuit declared: "[W]e believe that the Supreme Court's decision in *White* suggests that the standard for judicial elections should be the same as the standard for legislative and executive elections." *Weaver*, 309 F.3d at 1321. That declaration commanded a majority despite this Court's own statement in *White* that "we neither assert nor imply that the First Amendment requires campaigns for judicial office to sound the same as those for legislative office." 536 U.S. at 783.

There is also uncertainty as to the validity of canons limiting the partisan activities of judicial candidates and sitting judges. *Compare In re Dunleavy*, 838 A.2d 338, 348 (Me. 2003), *cert. denied*, 541 U.S. 960 (2004) (upholding Maine's canons prohibiting sitting judges from accepting campaign contributions and requiring judges to resign from the bench before running for political office); *and In re Raab*, 793 N.E. 2d 1287, 1292 (N.Y. 2003) (upholding New York's political activity canon); *with White*, 416 F.3d at 760-63 (striking down Minnesota's canons prohibiting judges and judicial candidates from engaging in partisan political activity). As with the other canons, the broad aim of partisan activities canons is the protection of due process, but with a particular focus on "disentangling judges from the political branches and the partisan machinery that guides the policy choices made in those branches." J.J. Gass, *After* White: *Defending and Amending the Canons of Judicial Ethics* 19 (Brennan Center for Justice 2004), *available at* http://www.brennancenter.org/resources/ji/ji4.pdf [hereinafter *After* White].

Even where canons have not been challenged in court, the fear of litigation has spawned the adoption of anticipatory amendments, weakening state canons. In North Carolina in July

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[17] Minnesota and Illinois were among 29 states that banned candidates from judicial office from personally soliciting money. While this Court's cert denial in *Dimick v. Republican Party of Minnesota*, 2006 WL 152093 (U.S. Jan. 23, 2006) (No. 05-566), is not a ruling on the merits, it is likely to accelerate the trend of challenges to the canons. Thus, the issue of recusal arising out of fundraising and political activities is likely to recur — most likely in increasingly egregious forms — unless the Court provides clarification in this case.

of 2002, for example, a member of the state's supreme court served as the master of ceremonies for a Republican Party fundraising event and spoke in support of the party's candidates. At the time, the action violated North Carolina's partisan political activity canon, as the justice later acknowledged. Less than two months later, however, the North Carolina Supreme Court amended the state's canons to permit judges to "attend, preside over, and speak at any political party gathering, meeting or other convocation" and engage in other political activity. Although this Court expressly declined to address Minnesota's partisan activity canon in *White*, North Carolina's justices told one reporter that they had amended the state's canons so as "to get ahead of a trend in federal court rulings and to avoid lawsuits over the state requirements." *See* Matthew Eisley, *Code Loosens Grip on Judges*, Raleigh News & Observer, Sept. 20, 2003 at B1.

Likewise, the Georgia Supreme Court dropped Georgia's Pledges or Promises Clause and its ban on statements that "appear to commit" a candidate. *See* http://www.gqrr.com/articles/1617/1412_JAS_ntlSurvey.pdf; *see also After* White at 4.

When canons regulating political activity are stricken, the consequences are real. Given the dynamics of modern political contests, the vacuum formerly occupied by the canon is almost invariably filled by a race to the bottom with respect to the conduct at issue. In such a scenario, judicial candidates refrain from once-prohibited conduct only at their peril. Without effective canons, the candidates face a prisoner's dilemma: either they comport themselves in a manner that may be inconsistent with impartiality or risk almost certain defeat.

The effect has been a surge in judicial campaign conduct (and other judicial conduct) that threatens judicial impartiality and the appearance of such impartiality. This leaves States, judicial candidates, and litigants in an extremely precarious position. As this case demonstrates, due process interests are in severe jeopardy, but no one is sure what can be done to safeguard them.

B. The States Need Guidance from This Court About the Circumstances in Which Due Process Requires Recusal.

Given the increasing import of money and the decreasing efficacy of the canons, rigorous recusal standards are necessary to protect the real and perceived legitimacy and impartiality of the courts. Since the increasing money in judicial campaigns is a nationwide phenomenon, and since judicial conduct canons are being circumscribed or eliminated in states throughout the country, the need for guidance as to recusal standards exists nationwide.

Illinois represents a case in point. It does not know whether its canons will stand, and even if they do, in the absence of strict recusal rules, it is experiencing the serious problems described by this petition.[18] It cannot be asked to rely only on prohibitions on outright *quid pro quo* bribery. If *ex ante* safeguards are unavailable or insufficiently protective, *ex post* remedies are essential. So, this case cries out for clarification of what due process protections remain.

Recusal is one remaining safeguard. Recusal does not trigger the same First Amendment scrutiny as canons limiting political speech. As Justice Kennedy made clear in his concurrence in *White*, states "may adopt recusal standards more rigorous than due process requires, and censure judges who violate these standards." 536 U.S. at 794 (Kennedy, J., concurring). Because Illinois has not adopted such standards, this Court's intervention is needed to determine whether recusal is mandatory when a judge receives more than $1 million in direct and indirect contributions from a party and its supporters and affiliates, while

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[18] The fact that Illinois has no contribution limits for judicial candidates exacerbates the tensions inherent in judicial campaigns. But even contribution limits, while helpful, do not obviate the need for other strong due process protections. Ohio, has contribution limits, but it still has high levels of fundraising from interest groups with stakes in cases before Ohio's Supreme Court. *See New Politics 2004* at 15 (noting that three of four winning candidates for seats on Ohio's high court raised over $1 million). Moreover, solicitation clauses cannot completely eliminate the appearance of bias, as this case illustrates. Thus, even in states where some preventive measures are in place, guidance as to the recusal requirements mandated by the Due Process Clause will be of tremendous value.

that party's case is pending.

In *White*, the Court expressly found that preventing bias for or against particular parties is an essential due process concern. 536 U.S. at 775–76; *see also In re Murchinson*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process."). It is precisely this narrow form of bias that is at issue in this case. There could scarcely be a more acute need for the Court to explain whether, and if so, under what circumstances, the Due Process Clause of the Fourteenth Amendment may strictly require recusal.

CONCLUSION

Thirty states will hold supreme court elections in 2006. Trends indicate that expenditures in many of the contests will be as "obscene"—to use Justice Karmeier's own word—as the race at issue in this petition.[19] Regrettably though, as with this case, such races often have consequences much worse than unseemliness; they engender an appearance of corruption that critically threatens the very foundation of the courts, and the rights of the litigants who appear in them. *Amici* thus respectfully urge the Court to grant certiorari in this case so as to provide guidance as to the circumstances in which the Due Process Clause of the Fourteenth Amendment mandates recusal.

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[19] *See* Ryan Keith, *Spending for Supreme Court Renews Cry for Finance Reform*, Assoc. Press (AP Wire), Nov. 3, 2004.

APPENDIX

APPENDIX

The Brennan Center for Justice at NYU School of Law unites thinkers and advocates in pursuit of a vision of inclusive and effective democracy. The Center recognizes that fair and impartial courts are the ultimate guarantors of liberty in our constitutional system. Through its Fair Courts Project, the Center works to protect the judiciary from politicizing forces, including the undue influence of money on judicial elections. The Center takes an interest in this case because of the important implications for all states that have judicial elections and that strive to maintain both the reality and appearance of impartiality in their courts.

The Campaign Legal Center, Inc. ("CLC") is a nonpartisan, nonprofit organization which works in the areas of campaign finance, communications, and governmental ethics. CLC represents the public interest in administrative and legal proceedings where the nation's campaign finance and related media laws are enforced: at the Federal Election Commission (FEC), the Federal Communications Commission (FCC), the Internal Revenue Service (IRS), and in the courts. In the campaign finance area, CLC generates legal and policy debates about disclosure, political advertising, contribution limits, enforcement issues, and many other matters. CLC also works to identify ethics breaches by government officials and supports prompt and rigorous enforcement of government ethics rules. CLC currently leads a coalition of ten government watchdog groups working to improve the congressional ethics process.

The Center for Governmental Studies is a nonpartisan, nonprofit organization which uses research, advocacy, technology, and education to improve the fairness of governmental policies and processes, empower the underserved to participate more effectively in their communities, improve communication between voters and candidates for office, and help implement effective public policy reforms.

Common Cause is a nonprofit, nonpartisan citizens' organization with approximately 300,000 members and supporters nationwide. Common Cause has had a longstanding concern with the growing problem of soft money in the federal political process, and has publicly advocated for congressional action to ban soft money in order to restore integrity to the electoral system. Common Cause was a strong advocate for congressional enactment of the Bipartisan Campaign Reform Act of 2002 and filed an

amicus brief in this Court in McConnell v. Federal Election Commission.

Democracy Matters is a nonprofit, nonpartisan organization that informs and engages college students and communities in efforts to strengthen our democracy. With campus-based chapters throughout the country, Democracy Matters focuses on the issue of private money in politics and other pro-democracy reforms. Democracy Matters in this way encourages the emergence of a new generation of reform-minded leaders.

The Greenlining Institute is a nonpartisan, nonprofit organization that works to improve the quality of life for low-income and minority communities throughout the United States. The institute was founded in 1993 and emerged from the Greenlining Coalition, considered the oldest coalition of African American, Asian American/ Pacific Islander, and Latino community leaders organized around a common purpose. The Greenlining Institute's major mission is to create an antidote to redlining practices which have had adverse consequences in the ability of low-income and minority communities to obtain financial services and products.

The League of Women Voters of the United States (the "League") is a nonpartisan, community-based organization that encourages informed and active participation of citizens in government and seeks to influence public policy through education and advocacy. The League is organized in more than 850 communities in every state and has more than 150,000 members and supporters nationwide. One of the League's primary goals is to promote an open governmental system that is representative, accountable, and responsive, and that assures opportunities for citizen participation in government decision making. To further this goal, the League has been a leader in seeking campaign finance reform at the state, local, and federal levels for more than two decades.

The National Association of State PIRGs ("U.S. PIRG") represents state Public Interest Research Groups ("PIRGs") at the federal level, including in the federal courts. In addition, U.S. PIRG and other state PIRGs have an interest in campaign finance issues, and the resolution of this case will assist U.S. PIRG and other state PIRGs in its advocacy for effective and comprehensive campaign finance reforms.

National Voting Rights Institute ("NVRI") is a nonprofit, nonpartisan organization dedicated to protecting the constitutional right of all citizens, regardless of economic status, to equal and meaningful participation in every phase of electoral politics. Through litigation and public education, NVRI works to promote electoral reforms that protect the integrity of government and encourage broad participation and political debate.

The North Carolina Center for Voter Education is a non-partisan, not-for-profit organization dedicated to improving the quality and responsiveness of our election system. By examining current systems of campaign finance laws, and by promoting research and public discussion about the electoral process, the Center hopes to raise citizen awareness, make the elections process more inclusive, and increase participation in elections. The Center takes an interest in this case because of its important implications on how states that elect their judiciaries, such as North Carolina, attempt to reduce the worrisome influence of money and politics over judicial selection.

Ohio Citizen Action, founded in 1975, is non-profit and non-partisan. Ohio Citizen Action takes an active role as a government watchdog. Citizen Action is the state's largest environmental and consumer advocacy group. In 1994, the Ohio Citizen Action Education Fund, the research affiliate of Ohio Citizen Action, created Ohio's first campaign fiancne database, comprised of contributions to Ohio's statewide and legislative candidates. The Education Fund has produced numerous money and politics studies, including reports examining contributions to Ohio Supreme Court candidates.

TheRestofUs.org is a nonpartisan watchdog committed to exposing the role of big money in politics and telling citizens what they can do about it. The mission of TheRestofUs.org is to stand up for the rest of us against special interests by promoting fairness and accountability in a government where the majority rules.